

ORIGINAL

OPEN MEETING AGENDA ITEM



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EXCEPTION

BEFORE THE ARIZONA CORPORATION COMMISSION

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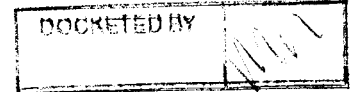
IN THE MATTER OF THE APPLICATION  
OF JOHNSON UTILITIES L.L.C. DBA  
JOHNSON UTILITIES COMPANY FOR  
AN EXTENSION OF ITS CERTIFICATE  
OF CONVENIENCE AND NECESSITY  
FOR WASTEWATER SERVICE TO  
INCLUDE AN AREA ENCOMPASSING  
FOUR RESIDENTIAL DEVELOPMENTS  
KNOWN AS WAYNE RANCH,  
VINEYARD ESTATES, MILAGRO AND  
TAYLOR RANCH.

DOCKET NO.: WS-02987A-04-0889

**EXCEPTIONS OF JOHNSON  
UTILITIES COMPANY**

Arizona Corporation Commission  
**DOCKETED**

FEB 25 2010



Snell & Wilmer

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On October 25, 2005, the Arizona Corporation Commission ("Commission") issued Decision 68236 approving the application of Johnson Utilities LLC ("Johnson Utilities" or the "Company") to extend its Certificate of Convenience and Necessity ("CC&N") to provide wastewater service. Pursuant to Decision 68236, Johnson Utilities was ordered to file quarterly reports (the "Quarterly Reports") on the status of (i) litigation in Maricopa County Superior Court Case No. CV2005-002692 (the "La Osa Litigation"), and (ii) litigation in Maricopa County Superior Court Case No. CV2005-002548 (the "Sonoran Utility Services Litigation"). In addition, Decision 68236 required the Company to procure a \$500,000 performance bond (subject to increase to \$1,000,000) to remain in place until further order of the Commission (the "Performance Bond"), and to file evidence of the maintenance of that bond by a quarterly letter of bond

1 maintenance. Johnson Utilities has complied with these requirements by filing the  
2 required Quarterly Reports and by maintaining the Performance Bond. Decision 68236  
3 notes that Johnson Utilities was not a party in either the Las Osa Litigation or the  
4 Sonoran Utility Services Litigation.

5 In a memorandum dated February 11, 2010, Utilities Division Staff ("Staff")  
6 confirmed that the Las Osa Litigation and the Sonoran Utility Services litigation has been  
7 dismissed with prejudice. Staff recommended that because the litigation has been  
8 dismissed: (i) the Commission should remove any further requirement that Johnson  
9 Utilities file the Quarterly Reports; and (ii) the Commission should release the  
10 Performance Bond and remove the associated requirement that Johnson Utilities make a  
11 quarterly bond confirmation letter filing. Staff prepared and submitted a recommended  
12 decision (the "Recommended Decision") for the Commission's consideration at the  
13 March 2-3, 2010, Open Meeting.

14 Johnson Utilities supports the recommended decision but has two comments, as  
15 discussed below.

16 1. **Elimination of Corresponding Requirements in Decision 68235**  
17 **and Decision 68237.**

18 On the same day the Commission issued Decision 68236, it also approved  
19 extensions of Johnson Utilities' CC&N in Decision 68235 (*Docket No. WS-02987A-05-*  
20 *0088*) and 68237 (*Docket No. WS-02987A-04-0288*). Each of these decisions contains  
21 the same requirements as Decision 68236 that Johnson Utilities file the Quarterly Reports  
22 and procure the Performance Bond, with the associated quarterly bond confirmation letter  
23 filing. The Company requests that the Commission clarify the Recommended Decision  
24 to make clear that the requirements for filing Quarterly Reports, maintaining the  
25 Performance Bond, and filing the quarterly bond confirmation letters are released under  
26 each of Decisions 68235, 68236 and 68237.

2. **Release of Additional Affiliated Interests Reporting Requirements.**

In Decisions 68236 and 68237, the Commission imposed additional affiliated interests reporting requirements on Johnson Utilities as a result of the La Osa Litigation and the Sonoran Utility Services Litigation.<sup>1</sup> Specifically, the Company is required to make filings every six months with Staff which:

- Provide the dollar amount transferred between Johnson Utilities and each of the defendants in the La Osa Litigation and the Sonoran Utility Services Litigation; and
- Provide copies of contracts or agreements to receive, or provide management, engineering, accounting, legal, financial or other similar services between Johnson Utilities and any of the defendants in the La Osa Litigation and the Sonoran Utility Services Litigation.

In addition to these requirements, Johnson Utilities is bound by the following requirements:

- Any transactions between Johnson Utilities and any of the defendants in the La Osa litigation and/or the Sonoran Utility Services would be subject to Commission scrutiny, including allowing Staff to see books and records of Johnson Utilities and/or the defendant with whom business was transacted;
- Johnson Utilities will not obtain a financial interest in any of the defendants in the La Osa Litigation and/or the Sonoran Utility Services Litigation or make any loans to, or guarantees for, any of the defendants without prior Commission approval; and
- Johnson Utilities will not make any dividend payments if such payments would have the effect of impairing its financial status, prevent it from attracting capital at fair and reasonable terms or impair Johnson's ability to provide safe, reasonable and adequate service.

<sup>1</sup> Staff's recommended conditions refer only to the La Osa Litigation. However, the Commission expanded Staff's recommended conditions to apply to the Sonoran Utility Services Litigation in its Findings of Fact ("FOF"). See Decision 68236, FOF 22 at page 9, lines 13-15, and Decision 68237, FOF 47 at page 12, at lines 9-11.

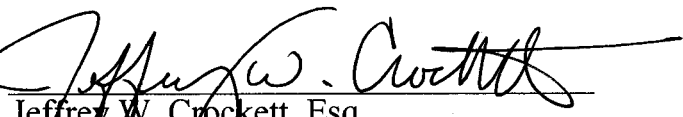
Johnson Utilities has fully complied with each of these requirements in Decisions 68236 and 68237. However, given that (i) the requirements were adopted in response to the Commission's concerns regarding the La Osa Litigation and the Sonoran Utility Services Litigation; (ii) the two cases did not involve Johnson Utilities as a party; and (iii) the two cases have both been dismissed with prejudice, Johnson Utilities believes that the requirements should now be released. Specifically, the Company requests that it be released from the requirement that it make affiliated interests filings every six months as set forth in Decision 68236 at Finding of Fact 21(e)(v)-(vi) [page 8, lines 15-22], and page 11, lines 17-19, and in Decision 68237 at Finding of Fact 46(i)(v)-(vi) [page 11, lines 10-17], and page 14, lines 26-28. In addition, the Company requests that it be released from any of the restrictions identified in the two decisions which go beyond the restrictions contained in the Commission's affiliated interests rules found at A.A.C. R14-2-801 *et seq.* ("Affiliated Interests Rules"). These restrictions are found in Decision 68236 at Finding of Fact 21(f)(i)-(iii) [page 9, lines 2-11], and page 11, lines 17-19, and in Decision 68237 at Finding of Fact 46(j)(i)-(iii) [pages 11-12], and page 14, lines 26-28.

Johnson Utilities fully complies with the requirements of the Commission's Affiliated Interests Rules, and there is no reason to require additional reports or to expand the scope of the rules with respect to the Company.

RESPECTFULLY SUBMITTED this 25th day of February, 2010.

SNELL & WILMER L.L.P.

By

  
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1 ORIGINAL and 13 copies of the foregoing hand-  
2 delivered this 25th day of February, 2010, to:

3 Docket Control  
4 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007-2996

5 COPIES of the foregoing hand-delivered this  
6 25th day of February, 2010, to:

7 Lyn A. Farmer, Chief Administrative Law Judge  
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